

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

ANTHONY UPCHURCH, #2333081 §
VS. § CIVIL ACTION NO. 2:20cv235
LARRY ROWE §

ORDER OF DISMISSAL

Petitioner Anthony Upchurch, an inmate currently confined in the Hutchins Unit of the Texas prison system, proceeding *pro se* and *in forma pauperis*, filed this federal petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 asserting an excessive bail claim from the Cass County Jail. The petition was referred to United States Magistrate Judge Roy S. Payne for findings of fact, conclusions of law, and recommendations for the disposition of the petition.

On May 17, 2023, Judge Payne issued a Report, (Dkt. No. 8), recommending that Petitioner's habeas petition be denied for failure to exhaust state court remedies, the case dismissed without prejudice, and that Petitioner be denied a certificate of appealability *sua sponte*. The Report was mailed to Petitioner at his last-known address. To date, however, no objections to the Report have been filed and Petitioner has not communicated with the Court since February 5, 2021 (Dkt. No. 7).

Because objections to Judge Payne's Report have not been filed, Petitioner is barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, barred from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the District Judge. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other*

grounds by statute, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

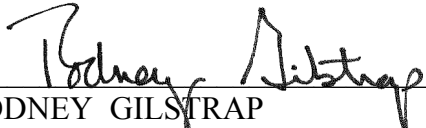
The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law"). It is accordingly

ORDERED that the Report of the United States Magistrate Judge (Dkt. #8), is **ADOPTED** as the opinion of the Court.

Further, it is **ORDERED** that the above-styled habeas action is **DENIED** for failure to exhaust state court remedies, and this civil proceeding is **DISMISSED**, without prejudice. Petitioner is further **DENIED** a certificate of appealability *sua sponte*.

Finally, it is **ORDERED** that any and all motions which may be pending in this civil action are hereby **DENIED**.

So ORDERED and SIGNED this 11th day of July, 2023.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE